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8 PRASAD LAKIREDDY

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 United States of America,

13 Plaintiff

14 v.  
15

16 Prasad Lakireddy,

17 Defendant.  
18

No. CR 00-40028 CW

REPLY TO GOVERNMENT'S  
OPPOSITION TO MOTION TO  
EXCLUDE, ORDER DISCOVERY OR  
CONTINUE TRIAL

Date: April 14, 2003  
Time: 2:00 p.m.  
Dept: 2 (Judge Wilken)

19 The government's attempts to explain, justify and  
20 rationalize its discovery violations must be rejected. The last-  
21 minute evidence identified by defendant in his moving papers  
22 should be excluded. In the alternative, trial should be  
23 continued to allow defendant time in which to adequately prepare  
24 to defend against the new evidence.

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DEFENDANT'S REPLY TO OPPOSITION TO  
MOTION TO EXCLUDE, ORDER DISCOVERY OR CONTINUE

ORIGINAL  
FILED

APR 14 2003

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

1 THE EXPERT WITNESS TESTIMONY SHOULD BE EXCLUDED

2 The government weakly attempts to justify the tardiness  
3 of its expert disclosures by reminding the Court that Rule 16  
4 does not "provide for a specific deadline for disclosure of  
5 experts." Gov't Opp. at p. 2. But this is not a "run of the  
6 mill" criminal case. The government's first witness list  
7 identified over one hundred witnesses. In a less complex case,  
8 disclosure of one expert two weeks before trial might be  
9 reasonable. In a case of this complexity and magnitude, however,  
10 disclosure of multiple experts two weeks or less before trial is  
11 manifestly unreasonable.

12 The government further argues that disclosure of its  
13 handwriting expert "did not violate the requirements of Rule 16  
14 as to timeliness because the government did not finally determine  
15 until April 8 that it would call this expert." This case has  
16 been pending for years. The government knew for years that it  
17 "intended" to present expert testimony on various issues. It  
18 always contended that Mr. Lakireddy signed false Affidavits of  
19 Support. Under any view of reasonable notice, this expert  
20 evidence should have been disclosed much earlier. The government  
21 cannot wait until the "eve" of trial to decide it "intends" to  
22 call an expert (or which expert to call) to avoid its obligations  
23 under Rule 16.

24 Whatever the general timeliness requirements for expert  
25 disclosures under Rule 16, it is clear that the defense must be  
26 given disclosure with sufficient time for the defense to obtain  
27 the assistance of an expert to attack the findings of the  
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1 prosecution's expert. That standard has not been met here.

2           The government has now conveniently re-characterized  
3 the testimony of its "expert" wage and tax witnesses as mere  
4 "persons able to testify about the procedures and practices of  
5 their respective agencies." That is debatable and, if the  
6 government persists in that reconsideration, it will be debated  
7 up to the moment the government attempts to present those  
8 witnesses at trial. For example, if the government witness  
9 opines that defendant violated federal minimum wage obligations,  
10 presumably he or she will render an opinion about whether the  
11 furnishing of housing and/or food qualifies towards those  
12 obligations. That opinion would call for expert testimony.

13           Moreover, all the testimony of the financial (wage and  
14 tax) witnesses should also be excluded under Rule 404(b), as it  
15 is collateral to the real issues in this trial, and could result  
16 in a "mini-trial" on regulatory and civil liability issues (such  
17 testimony bears the danger of confusing the standards and even  
18 burden of proof). If the government has complaints about whether  
19 Mr. Lakireddy fulfilled his obligations regarding minimum wage,  
20 unemployment and disability payments, there are other, more  
21 appropriate, forums in which it can litigate those issues.<sup>1</sup>

22           **THE UNCHARGED SEXUAL EVIDENCE SHOULD BE EXCLUDED**

23           The government now contends that it may introduce  
24 evidence of any alleged sexual misconduct by co-conspirators LB

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27           <sup>1</sup> As to the "adequacy" of the government's expert  
28 disclosures, defendant notes that he still does not have the  
exemplars on which the handwriting comparison was made.

1 and Vijay Lakireddy that was contained in discovery previously  
2 provided.

3 But the only evidence that would be relevant is  
4 evidence of illegal sexual activity in the United States.  
5 Otherwise, such evidence will not be relevant and should be  
6 excluded under Rules 403 and 404(b).

7 **THE IMMIGRATION EVIDENCE SHOULD BE EXCLUDED**

8 The government contends that the additional Affidavits  
9 of Support "did not come to the attention of prosecutors or  
10 investigating agents until it had identified the above persons as  
11 possible witnesses for trial." But the government identified  
12 these persons as possible trial witnesses on the critical subject  
13 of proof (on the conspiracy charged in Count One) almost three  
14 years ago. These persons were included among those as for whom  
15 LB Reddy and other co-conspirators were given increases under the  
16 Guidelines. It is right to assume that the government, before  
17 recommending these sentencing increase, reviewed the A files for  
18 these illegal aliens to determine how they had immigrated. The  
19 prosecutors and law enforcement agents were involved in  
20 identifying these people for the Probation Office. In short, the  
21 government has made allegations about information regarding  
22 illegal immigration of (most concisely established by the  
23 contents of the A files) these people on numerous occasions for  
24 over two years.

25 **DISCOVERY ISSUES**

26 The government agreed to provide Jencks material well  
27 one month in advance of trial. They now cite Jencks for the  
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1 proposition that no pretrial production is required. Apparently,  
2 upon reconsideration, the government is now willing to suffer  
3 through a lengthy mid-trial postponement while Jencks materials  
4 are assimilated and investigated by defendant, and to risk a  
5 later dismissal if Brady/Giglio material is discovered midway  
6 through trial. The Declaration of Steve Gore filed with this  
7 reply establishes conclusively that such investigation is  
8 necessary.

9 As to the A files, the government is correct that the  
10 source of his request is Jencks and Brady/Giglio. These  
11 witnesses have likely received benefits from the federal  
12 government.

13 The same is true of the families of the complaining  
14 witnesses. They have certainly benefitted from their daughters'  
15 cooperation with the United States government. Their testimony  
16 is relevant on that ground. And there is clearly authority for  
17 requiring the government to either disclose their whereabouts or  
18 produce them for trial. If these people were confidential  
19 informants with material information, the Court would order the  
20 government to do what the defense requests here. The identities  
21 here are not secret, just the whereabouts. These family members  
22 are material witnesses, so the Court should order the relief  
23 requested.

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DEFENDANT'S REPLY TO OPPOSITION TO  
MOTION TO EXCLUDE, ORDER DISCOVERY OR CONTINUE

## CONCLUSION

Based on the foregoing, defendant Lakireddy respectfully requests that the evidence identified in his moving papers be excluded, and that certain discovery be ordered produced immediately. Alternatively, he requests a continuance of the trial.

DATED: 4/14/03

Respectfully submitted,

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By:   
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